

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

WASHINGTON FRONTIER LEAGUE)
BASEBALL, LLC, and STUART A. WILLIAMS,)

Plaintiffs,)

v.) Case No. 1:14-cv-01862-TWP-DML

MICHAEL E. ZIMMERMAN,)
MKE BASEBALL, LLC,)
MKE SPORTS & ENTERTAINMENT, LLC, and)
FRONTIER PROFESSIONAL BASEBALL, INC.,)

Defendants.)

ORDER ON MOTIONS TO DISMISS (Dkts. No. 22 and 28)
AND MOTION FOR LEAVE TO FILE SUR-REPLY

This matter is before the Court on Defendants Michael E. Zimmerman’s, MKE Baseball, LLC’s, and MKE Sports & Entertainment, LLC’s (collectively, “Zimmerman Defendants”) Motion to Dismiss ([Filing No. 22](#)), Defendant Frontier Professional Baseball, Inc.’s (“Frontier League”) Motion to Dismiss ([Filing No. 28](#)), and Plaintiffs Washington Frontier League Baseball, LLC’s and Stuart A. Williams’s (collectively, “Washington Club”) Motion for Leave to File Sur-Reply ([Filing No. 60](#)). Having considered the Motions, briefs, and procedural posture of this case, the Court **DENIES** these Motions.

A. Motions to Dismiss

On November 14, 2014, Washington Club filed its Complaint, asserting claims for civil conspiracy to breach fiduciary duties, tortious interference, and unjust enrichment against the Zimmerman Defendants ([Filing No. 1](#)). On January 13, 2015, the Zimmerman Defendants filed their Motion to Dismiss. Then on January 26, 2015, the Frontier League filed its Motion to Dismiss. Soon thereafter, on February 6, 2015, Washington Club filed an Amended Complaint

([Filing No. 36](#)) which addressed the alleged deficiencies raised in the motions to dismiss. On February 20, 2015, the Zimmerman Defendants filed a second Motion to Dismiss ([Filing No. 39](#)), and the Frontier League also filed a second Motion to Dismiss ([Filing No. 41](#)). The filing of the Amended Complaint and a second round of motions to dismiss has rendered the Defendants' first motions to dismiss moot. Therefore, the Court **DENIES as moot** the originally filed Motions to Dismiss ([Filing No. 22](#)) and ([Filing No. 28](#)). The Zimmerman Defendants' and Frontier League's Motions to Dismiss at Docket Numbers 39 and 41, respectively, remain pending and will be resolved by separate order.

B. Motion for Leave to File Sur-Reply

In support of its Motions to Dismiss, the Frontier League submitted "Litigation Reports" from its executive committee to support its "business judgment rule" argument as a basis for dismissal. On May 6, 2015, Washington Club submitted an April 23, 2015 "Commissioner's Decision" to rebut the Frontier League's "business judgment rule" argument ([Filing No. 57](#)). Washington Club seeks leave to file a sur-reply, explaining that "[t]he plaintiffs' intent for the sur-reply, if one is permitted, is to highlight specific facts from the Decision and relate them to the arguments previously raised by the parties," ([Filing No. 57 at 4](#)) and "to address the application of the Decision to the arguments raised by the parties for and against the Frontier League's motion to dismiss." ([Filing No. 60 at 2.](#)) These are not proper reasons for allowing leave to file a sur-reply. Sur-replies are occasionally permitted to address new arguments raised for the first time in a reply brief. The need for a sur-reply is lacking here. The Court is capable of analyzing the facts and arguments regarding the "Litigation Reports" and "Commissioner's Decision" and will give the "Litigation Reports" and "Commissioner's Decision" the appropriate consideration when

determining the Motions to Dismiss. Therefore, Washington Club's Motion for Leave to File Sur-
Reply ([Filing No. 60](#)) is **DENIED**.

SO ORDERED.

Date: 6/25/2015



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

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